IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4193 of 1986
WITH
SPECIAL CIVIL APPLICATION No 5147 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

K S CHAUDHARY JOINT DIRECTOR (F & A)

Versus

OIL & NATURAL GAS COMMISSION

Appearance:
MR S TRIPATHY for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
MR RAJNI H.MEHTA FOR AJAY R MEHTA for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 31/01/2002

COMMON JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

1 By these two petitions the petitioner who is an employee of Respondent-ONGC is challenging the order of his compulsory retirement from service and supersession to the higher post while he was in service. Necessary facts leading to the filing of the present petitions are as under.

2 The petitioner was born on 12/01/1933 and during pendency of the petition has crossed 58 years of age of superannuation. On 26/7/1982 he was appointed on the post of Joint Director (F&A) at Dehradun and posted as Incharge of Internal Audit. It is not in dispute that he was appointed for a probationary period which he satisfactorily completed. Certificate to that effect was also issued in his favour. It is also not in dispute that he was called for an interview for the post of Addl.Director (F&A) and he was not selected. For the second time he faced interview on 23/11/1994 for the promotion to the post of Addl.Director (F&A) but was not selected. It is against this non selection to the aforesaid promotional post that he has filed SCA No.5147/85.

3 During the pendency of the first petition which was against his supersession, the petitioner was compulsorily retired vide impugned order dated 11/8/1986 in exercise of powers under Regulations framed under ONGC Act, which were in force at the relevant time. Against the impugned order of compulsory retirement, the petitioner has filed SCA No.4193/86 which is also being decided by this common judgment.

4 Taking up first the case against compulsory retirement of the petitioner, the petitioner's allegations in the petition are that he had discharged his duties sincerely, diligently and highlighted certain financial and accounting irregularities of the superior authority resulting into displeasure of several superiors. The main ground urged is that the impugned order of compulsory retirement is arbitrary and on extraneous considerations. He had incurred displeasure of his superiors after he had pointed out several financial irregularities committed in the various sections and departments.

5 The ONGC in their detailed reply affidavit have denied all the allegations of malafides and have tried to support their action by merely stating that the petitioner's case was considered under the provisions of Regulation 25 and as his performance consistently was

below standard he was retired. The learned Counsel appearing for the ONGC pointed out to us the relevant portion of the affidavit which supports the order of compulsory retirement. During the course of hearing he produced photocopies of the report of the screening committee which considered the case of the petitioner recommending his compulsory retirement. The petitioner objected to the photo copy of the report of the screening committee being referred to at this stage. In our opinion such report should have formed part of the reply affidavit in that case the petitioner could have been granted an opportunity for filing the counter. The report of the screening committee before us is not in original and does not bear any date or signature of the members of the screening committee. Since, it was not produced at the relevant time with reply affidavit, it is not possible to rely on the same as an evidence that the petitioner's case was considered for forming subjective opinion by the authority to compulsorily retire him. In the photocopy of the report of the screening committee produced before us there is a mention of certain gradings like gradings 5 and 6. It is not possible to understand whether these gradings show his performance to be below average. In any case the petitioner having successfully completed one year probation period the gradings of the years of 1982-83 could not haven been taken into consideration by the screening committee. The petitioner joined service at the age of 50 years and has been retired at the age of 53 years when he had not even completed five years of service. The period of service of petitioner was too short to form a bonafide opinion that he was not a suitable officer to be continued in service. Along with the reply affidavit no service record or confidential reports of the petitioner have been produced to demonstrate that those who were empowered to assess his performance have found him to be below standard. On the contrary, in the reply affidavit itself it has been stated that at no point of time during his entire service period any adverse remark was communicated to him.

6. The law is settled that an employer has an absolute right to compulsorily retire an employee who is not efficient and is a burden on the organization. However, it is also well settled in law that any order of compulsory retirement in accordance with service rules can be passed only on the basis of objective material which is open to scrutiny by the Court for the purpose of finding out whether an employer had formed a bonafide opinion on the basis of relevant material on nonsuitability of the employee for continuing in service.

It is sufficient for us to refer to the decision of the Supreme Court in the case of Baikuntha Nath Das vs. Chief District Medical Officer,{(1992) 2 SCC 299,Para 34} in which certain principles which have been deduced by the Supreme Court to judge the correctness of the decision of compulsory retirement, read as under :

"(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not

upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstances by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above."

7 In the present case of compulsory retirement before us the respondent ONGC as an employer has completely failed to substantiate the order of compulsory retirement. There is nothing to satisfy this Court that the retirement was based on service record and confidential reports showing the employee to be below standard. As we have mentioned above, after completion of one year probationary period the petitioner had hardly worked for 3 years and it was not such a period as to rate him unfit for continuing him in service. We cannot accept such vague and bald allegations made in the reply affidavit that petitioner's performance throughout the period was unsatisfactory. In the aforesaid circumstances, we have no option but to quash and set aside the impugned order of compulsory retirement and to allow this petition.

8. SCA NO.5147/85.

Now coming to SCA No.5147/85 which is directed against the petitioner's supersessions in the year 1984. In this case except reply affidavit no records have been produced by the respondents. The proceedings of the promotion committee are also not produced to satisfy us that the petitioner's case along with other candidates was duly considered to deny him promotion. Admittedly the petitioner had already crossed 58 years being the age of superannuation. The petitioner's supersession therefore having not been justified by the respondents by producing necessary material we can only direct the concerned authority to reconsider his case retrospectively by treating him to be in service from the date of his compulsory retirement till the date he would have attained the age of 58 years and if found fit to grant him notional promotion from the due date.

SCA.4193/86:

9. In the result SCA No.4193/86 succeeds and is allowed. Impugned order of compulsory retirement dated 11/8/1986, Annexure "A" is quashed with a direction to the respondent authorities to treat the petitioner to be in service from the date of his retirement i.e. 11/8/1986 till the date of attaining the superannuation i.e. 31/1/1991. By treating him in notional service for the aforesaid period. He shall also be entitled to arrears of salary and other admissible benefits which shall be worked out by the department within three months from the date of the receipt of this order.

SCA No.5147/85 :

10. The SCA No.5147/85 filed by the petitioner against his alleged supersession for the post of Additional Director (F&A) is also allowed with a direction to the respondents to reconsider his case retrospectively for the entire period of service from date of his appointment to the date of his superannuation. Treating him thus notionally in service, if he is found fit, he be promoted from the due date when officer immediately next junior to him had been promoted.

11. The petitioner has suffered for a long period due to unjust attitude of the respondents. He therefore deserves to be compensated by awarding costs. We therefore assess the costs at Rs.5,000/- which shall be paid to him by the respondents. Rule is made absolute to the aforesaid extent in both the petitions.

Sd/-
(D.M.Dharmadhikari, C.J.)

Sd/-
(D.A.Mehta, J)

m.m.bhatt